

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

MELISSA HUTCHENS, M.D.,

Respondent,

v.

BURRELL, INC.,

Appellant.

DOCKET NUMBER WD72838

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: June 14, 2011

APPEAL FROM

The Circuit Court of Boone County, Missouri
The Honorable Kevin M.J. Crane, Judge

JUDGES

Division Four: Hardwick, C.J., Mitchell, J., and Norris, Sp.J.

ATTORNEYS

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Attorneys for Respondent,

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Columbia, MO

Attorney for Appellant.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

MELISSA HUTCHENS, M.D.,)
)
Respondent,)
v.) **OPINION FILED:**
) **June 14, 2011**
BURRELL, INC.,)
)
Appellant.)

WD72838

Boone County

Before Division Four Judges: Lisa White Hardwick, Chief Judge, Presiding,
Karen King Mitchell, Judge, and Donald T. Norris,
Special Judge

This is a contract case. The plaintiff pled that she and the defendant agreed that she would provide the defendant services at a specified hourly rate. She did not plead a contract containing an open price term, nor did she ever plead a right of recovery in quantum meruit. At trial, the plaintiff admitted that she and the defendant never agreed that she would be paid a specified hourly rate for her services. The issue is whether the plaintiff made a submissible case, given that (1) she did not prove the contract that she pled; and (2) she never amended her pleadings. We hold that she did not make a submissible case in that, in a contract case, the plaintiff must recover on the contract she pled. Therefore, we reverse and enter judgment for the defendant.

REVERSED. JUDGMENT ENTERED PURSUANT TO RULE 84.14.

DIVISION FOUR HOLDS:

The rule in Missouri is that, in a contract case, the plaintiff may recover, if at all, only on the contract she pled; she may not recover on some other contract. Here, Hutchens did not prove the contract she pled in that she pled a contract for an agreed contract rate of \$70 per hour, and it is undisputed that no contract containing that term existed.

Accordingly, the trial court erred in denying Burrell's motion for judgment notwithstanding the verdict, and we reverse the trial court's judgment. Pursuant to Rule 84.14, we give such judgment as the court ought to give, and we accordingly enter judgment for Burrell.

OPINION BY: Karen King Mitchell, Judge

June 14, 2011

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